



**CITY OF SUNNYVALE
REPORT
Heritage Preservation Commission**

March 23, 2005

SUBJECT: **2005-0023 - City of Sunnyvale** - Study Issue to consider amending the City of Sunnyvale's 1987 Legislative Policy for Outdoor Dining on the 100 Block of South Murphy Avenue

REPORT IN BRIEF

The purpose for this report is to examine and consider changes to Sunnyvale's current Policy 1.1.10, Outdoor Dining on South Murphy Avenue. This review of the current Outdoor Dining Policy is part of the *Visual Streetscape Standards* Council Study Issue that was ranked number 1 of 8 in the Community Development Department for the 2005 study issue calendar. This portion of the study issue is being reviewed prior to the completion of the entire Streetscape Standards since Outdoor Dining Permits are reviewed on an annual basis in the Spring.

This study provides the City Council and Heritage Preservation Commission (HPC) an opportunity to revisit this legislative policy and to consider revisions to reflect current operational and enforcement experience. Staff is recommending several modifications to the City's current Outdoor Dining Policy, including: allowing outdoor dining on adjacent parcels, eliminating the requirement for free-standing ash cans, permitting free-standing umbrellas, allowing square tables, allowing the use of paper napkins, and requiring a five foot wide pedestrian clearance on the public sidewalk.

BACKGROUND

On March 9, 1982, the City Council adopted Policy 2.1.3, Guidelines for Long-Term Outdoor Accessory Commercial Uses. Although this policy was intended to apply to outdoor dining facilities, it had no specific guidelines for outdoor dining tables on public sidewalks. During this same time period, sidewalk dining was becoming increasingly popular in California. In Sunnyvale, in particular, Murphy Avenue restaurants were beginning to request permission to use the sidewalk for such purposes. Therefore, on April 14, 1987, the City Council adopted the policy guideline for Outdoor Dining on South Murphy Avenue (see Attachment A). Since that time, with the permission and encouragement of the City, sidewalk dining has flourished on the 100 Block of South Murphy Avenue.

Over the past year, the City has received numerous complaints regarding appearance, table placement, and litter related to outdoor dining. Therefore,

since March, 2004, a proactive enforcement effort has been underway of all outdoor dining uses on South Murphy Avenue to insure that each business holds a valid permit and is operating in accordance with the conditions of that permit. In the course of this enforcement, questions have arisen regarding the original intent of City Council and the extent to which all of the original guidelines continue to make sense.

EXISTING POLICY

The primary purpose of the policy is to regulate the type, location and appearance of outdoor dining uses in the public right-of-way of the 100 block of South Murphy Avenue. Regulation is through the issuance of a Miscellaneous Plan Permit (MPP) as prescribed in Titles 19 (Zoning Ordinance) and Title 13 (Streets and Sidewalks) of the Municipal Code. If an MPP is approved, a separate Encroachment Permit is not required. The goals of the policy are to: "(1) ensure pedestrian and fire access lanes, (2) prevent a cluttered appearance; and (3) promote an attractive commercial environment".

The policy includes locational standards which require that the dining be adjacent to the business for which it is an accessory use (not in front of neighboring businesses), appearance standards which require metal or wood furniture (no plastic) with any sun shades to be part of the table assembly, and environmental aesthetic standards which require reasonable design and color compatibility with the building façade and adjacent structures.

Each Miscellaneous Plan Permit for outdoor dining on South Murphy Avenue issued by the Department of Community Development includes a list of 28 conditions of approval which are based largely upon the Outdoor Dining Policy (see Attachment B).

Over the past year the City received an increased number of complaints that businesses on Murphy Avenue were not abiding by the conditions on their permits. City Council members had noted an increase in litter along the street, particularly cigarette butts. Therefore, in March, 2004, the Community Development Department began a proactive enforcement program of outdoor dining permits on Murphy Avenue. First, the entire street was surveyed to determine which businesses were operating outdoor dining without a valid permit. Violators were informed that they must obtain a permit, and those who failed to do so within a reasonable period of time were cited. Second, staff began regular enforcement of the conditions of approval on the permits. As usual, enforcement began with warning letters, followed by citations, as necessary. New permits had two new conditions of approval, to require ash cans and ashtrays, and to require that the sidewalk and planter area be maintained free and clear of all litter. Staff began enforcing these conditions as the new permits were issued.

Heritage Preservations Commission's Role: The 100 Block of South Murphy Ave was designated a Local Landmark District in 1981, after the City passed the Heritage Preservation Ordinance. As a result, all exterior changes to properties require approval of a Landmark Alteration Permit from the Heritage Preservation Commission. The HPC has participated in the adoption of most of the policy regulations and design standards associated with this district in the past. HPC does not play a role in the regulation or enforcement of Council's Outdoor Dining Policy on South Murphy Avenue.

DISCUSSION

In the course of enforcement, questions have arisen regarding the original intent of City Council in 1987, and the extent to which all of the original guidelines continue to make sense. The most frequently expressed questions and concerns regard the following:

- **Litter**

The existing policy does not directly address litter. Complaints have been in regard to litter on the sidewalks and in the planters near areas of outdoor dining. Most of the litter is not derived directly from the food service, since food is not served in paper wrappers (as at fast food restaurants), and the conditions of approval do not permit paper napkins and/or table cloths. Rather, most of the litter appears to be dropped by patrons, and includes candy and gum wrappers, cigarette butts, and empty cigarette packages.

- **Location Within Sidewalk on Which Restaurant Fronts**

The existing policy states that "the use shall not encroach upon the frontage of neighboring businesses". Some businesses feel that this is too restrictive, particularly if adjacent businesses agree to having restaurant tables in front of their stores. The issue seems to be particularly acute on the summer evenings of Music and Market, and during other outdoor public events when Murphy Avenue is closed to automobile traffic.

- **Furniture**

The existing policy requires that tables and chairs be of metal or wood construction, and that tables be round or have more than four sides (e.g. not square). Restaurants have complied with the furniture material requirement, but have requested that square and rectangular tables be permitted. The existing policy requires that sun shades or umbrellas be permitted only if they are part of the table assembly. Independent, free-standing umbrellas are not permitted. Because the adopted policy permits no overhead structures other than umbrellas, heat lamps are not permitted. These guidelines are intended to achieve the goal of preventing

a cluttered appearance. Some restaurants have requested free-standing umbrellas and/or heat lamps. They argue that free-standing umbrellas can be moved to better meet individual diners' preferences for sun or shade. They believe that heat lamps will increase the comfort of patrons on cool evenings, thereby extending the time period over which outdoor dining will be available. The City's Risk Management Division and Fire Marshall have both stated that it would not be in the best interest of the City to allow heaters in the public right-of-way.

- **Sidewalk Clearance**

The adopted policy requires unobstructed pedestrian access along the sidewalk of at least six feet in width. The Fire Prevention Division, which originally proposed this clearance for fire exiting purposes, now finds five feet of clearance to be acceptable. Traffic Engineering, which seeks to adequately facilitate pedestrian circulation, prefers six feet but has indicated that five feet may be acceptable. The City standard for minimum sidewalk width is five feet, which meets ADA requirements.

In past practice, staff has worked with the restaurant owners to reach the optimal arrangement for their outdoor tables and chairs. These approvals occasionally included permitting a five-foot minimum sidewalk clearance area. In these limited cases, staff required only five feet since it meets Fire Prevention Division requirements, ADA requirements, and the intent of the policy to allow sufficient public access.

FISCAL IMPACT

Amendment of the Legislative Policy for Outdoor Dining in South Murphy Avenue will have no direct fiscal impact. The current proactive concentrated enforcement has been considered a short-term effort. City staff has proactively enforced the policy over the past calendar year; if Council wishes such concentrated enforcement to be ongoing, additional resources will be required. To the extent that an amended policy will increase restaurant business through outdoor dining, the City should receive increased sales tax revenue. The opposite would be the case if an amended policy resulted in a decrease in restaurant business.

CONCLUSION

It has been nearly 18 years since the City Council adopted the Legislative Policy for Outdoor Dining on South Murphy Avenue. During that time, sidewalk dining has become more popular on Murphy Avenue. The Legislative Policy is implemented through the imposition of conditions on the Miscellaneous Plan Permits which are issued for outdoor dining. Recent enforcement of these permit conditions has revealed widespread misunderstanding, concern and lack

of compliance with certain conditions. City Council may wish to clarify or revise those aspects of the policy on which these conditions are based.

PUBLIC CONTACT

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Display Ad published in the <i>Sun</i> newspaper • Mailed to business and property owners on S. Murphy Ave. and in Town and Country • Outreach meeting with Downtown merchants and property owners 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Website • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • City of Sunnyvale's Website • Recorded for SunDial

Staff met with Sunnyvale Downtown Association on November 18, 2004 and March 10, 2005, to discuss the recommendations. At the March 10th meeting, there were nine business and property owners who expressed a wide variety of concerns and ideas about Murphy Avenue. Many of their suggestions related to streetscape enhancements and not the Outdoor Dining Policy. Some examples include: removing the planters on the sidewalks, adding public art, eliminating on-street parking, making Murphy Avenue a pedestrian only corridor, selling the naming rights to Murphy Avenue, a prohibition on loud motorcycles on the street, etc. These suggestions will be studied in detail during the second phase of this study, which relates to streetscape improvements on Murphy Avenue.

There were also suggestions related to the Outdoor Dining Policy, which include:

- **Outdoor Heaters**

Allow heaters on the sidewalk to extend the hours of outdoor dining. The restaurant owners who currently utilize the outdoor dining permits believed this was necessary for the comfort of their patrons during the majority of evening hours.

- **On-street Parking**

Eliminate on-street parking during the evening hours, in order to allow additional tables and chairs to be placed outside. This idea could be implemented on a trial basis only. A major change to Murphy Avenue such as this would require additional staff review and study prior to implementation.

ALTERNATIVES**Litter:**

1. Amend the policy to require ashtrays, ash cans and litter removal.

This amendment would provide the policy basis for the three conditions which have been included on recently issued permits. These conditions are enforced by requiring the restaurant to place an ash can on the sidewalk near the door when outdoor dining is available, to provide ashtrays to outdoor diners who request them or who are smoking, and to maintain the sidewalk and planters in front of the restaurant free and clear of litter.

2. Amend the policy to require ashtrays and litter removal, and to allow paper napkins.

This alternative would modify the current policy to require ashtrays and litter removal but not ash cans. This amendment would also allow paper napkins. Ash cans are intended to be used primarily by customers of restaurants and bars who step outside to smoke. They are not generally used by outside diners, who can have ashtrays at their tables. Therefore, there is little relationship between outdoor dining and the need for ash cans.

Location Within Sidewalk on Which Restaurant Fronts:

3. Amend the policy to allow encroachment upon the frontage of neighboring businesses.

This amendment would allow a restaurant to place its tables in front of one or more adjacent businesses if it obtains written approval from those businesses and if it provides liability insurance to cover the outdoor dining in front of those businesses. This privilege would terminate when the adjacent business changes ownership or when the adjacent business requests termination.

4. Amend the policy to allow a single permit for multiple parcels.

Occasionally a restaurant will occupy two or more adjacent parcels, or two separate restaurants on adjacent parcels may wish to operate a single outdoor dining facility. This amendment would allow for a single permit for multiple parcels, provided that the application must be signed by all restaurants which would participate and liability insurance is provided for the entire outdoor dining area.

5. Amend the policy to allow encroachment upon frontage of neighboring business when the street is closed for an outdoor public event.

This amendment would allow a restaurant to place tables in front of adjoining businesses when Murphy Avenue is closed to traffic for outdoor public events (such as the summer Wednesday night Music and Market, the Saturday Farmers Market, and the Art and Wine festival), if it obtains written approval from those businesses and if it provides liability insurance to cover the outdoor dining in front of those businesses. It is anticipated that a restaurant could obtain a single permit each year to cover all such events.

Furniture:

6. Amend the policy to permit free-standing umbrellas.

This amendment would delete the requirement that an umbrella is permitted only if it is part of a table assembly.

7. Amend the policy to eliminate the requirement that tabletops must be round or have more than four sides.
8. Amend the policy to permit heat lamps.

This would amend the present requirement that overhead structures are limited to table umbrellas to also permit portable free-standing heat lamps powered by propane.

Sidewalk Clearance:

9. Amend the policy to require a minimum five-foot pedestrian clearance.

Other Possible Actions:

10. Amend the policy in a manner not prescribed in the foregoing alternatives.
11. Do not amend the policy.

RECOMMENDATION

Staff recommends alternatives 2, 4, 5, 6, 7 and 9.

Litter:

Staff believes that the current permit conditions requiring ashtrays and litter removal would have more credibility if they were backed by an adopted

Legislative Policy. Staff does not recommend that ash cans continue to be required on outdoor dining permits because there is very little nexus between outdoor dining and the need for ash cans. Ash cans are typically required as a condition of approval for bars and should be placed outside of all public entrances. The City has no discretionary authority to require ash cans for restaurants which do not have outdoor dining permits. The Department of Public Works has placed ash cans in front of such establishments on Murphy Avenue. Staff believes that the litter removal requirement would make the prohibition against paper napkins unnecessary.

Location Within Sidewalk on Which Restaurant Fronts:

Staff believes that the strongest demand for expanded outdoor dining in front of retail (not restaurant) establishments occurs during outdoor events when Murphy Avenue is closed to automobile traffic. At these times, an extension of the outdoor dining area in front of adjacent businesses provides a public service, in that demand for such tables generally exceeds the number which can be placed directly in front of restaurants. At all other times, staff believes that the outdoor dining area should be limited to the restaurant frontage. A cursory review of outdoor dining facilities in other Silicon Valley cities has revealed that such facilities are almost uniformly limited to the restaurant frontage.

There are limited circumstances when adjacent parcels may wish to obtain a single outdoor dining permit. Two examples currently exist on Murphy Avenue: Dishdash/Hookah Lounge and Thai Basil/Miramar. Staff sees no need to require separate permits for each parcel in such cases.

Furniture:

The requirement for umbrellas to be part of a table assembly was intended to prevent clutter. Staff believes, however, that free-standing umbrellas provide a wider selection of attractive umbrella designs and provide more flexibility for meeting the sun/shade desires of patrons at various times of the day. Staff does not recommend that free-standing heaters be permitted. Not only do they contribute to a cluttered appearance, but also they present the possibility that a patron could be injured by such heaters, thereby increasing the potential liability of the City, despite private liability insurance. The City's Risk Management Division and Fire Marshall have both stated that it would not be in the best interest of the City to allow heaters in the public right-of-way.

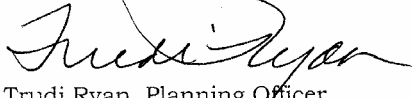
The requirement for tabletops to be round was intended to prevent corners protruding into the sidewalk clearance area. Since the time of the Outdoor Dining Policy adoption, staff has found that tabletop corners have not been an issue of concern for pedestrians on Murphy Avenue. Staff believes that two policy requirements already exist that address this potential safety issue. They

are: a minimum five foot sidewalk clearance area be kept open, and table legs cannot protrude into the sidewalk clearance area. In addition, staff believes that allowing a variety of tabletop forms will provide business owners much needed flexibility when designing their small outdoor seating areas.

Sidewalk Clearance:


Staff finds the five-foot pedestrian clearance requirement to be acceptable to all regulatory agencies. Given the relatively limited area within which tables can be placed on the Murphy Avenue sidewalk, a minimum pedestrian clearance seems appropriate to staff.

Reviewed by:



Trudi Ryan, Planning Officer

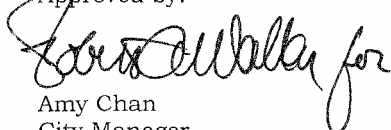
Reviewed by:



Robert Paternoster
Director of Community Development Department

Prepared by: Steve Lynch, Project Planner

Approved by:



Amy Chan
City Manager

Attachments

- A. Policy 1.1.10 Outdoor Dining on South Murphy Avenue
- B. Conditions of Approval on Outdoor Dining Permit
- C. Recommended Revision to Policy 1.1.10